

which the employer would have an obligation to contribute if the contribution requirement with respect to the plan were greater than zero.

(d) *Plan rules.* Plans may adopt rules for calculating an employer's initial allocable share of the plan's unfunded vested benefits in a manner other than that prescribed in paragraph (c)(1) of this section, provided that those rules allocate the plan's unfunded vested benefits to substantially the same extent the prescribed rules would. Plan rules adopted under this paragraph shall operate and be applied uniformly with respect to each employer. If such rules would increase the reallocation liability of any employer, they may be effective with respect to that employer earlier than three full plan years after their adoption only if the employer consents to the application of the rules to itself. The plan sponsor shall give a written notice to each contributing employer and each employee organization that represents employees covered by the plan of the adoption of plan rules under this paragraph.

[61 FR 34102, July 1, 1996, as amended at 73 FR 79636, Dec. 30, 2008]

**§ 4219.16 Imposition of liability.**

(a) *Notice of mass withdrawal.* Within 30 days after the mass withdrawal valuation date, the plan sponsor shall give written notice of the occurrence of a mass withdrawal to each employer that the plan sponsor reasonably expects may be a liable employer under § 4219.12. The notice shall include—

- (1) The mass withdrawal valuation date;
- (2) A description of the consequences of a mass withdrawal under this subpart; and
- (3) A statement that each employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule. Failure of the plan sponsor to notify an employer of a mass withdrawal as required by this paragraph shall not cancel the employer's mass withdrawal liability or waive the plan's claim for such liability.

(b) *Notice of redetermination liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(2) to have determined

the redetermination liability of employers, the plan sponsor shall issue a notice of redetermination liability in writing to each employer liable under § 4219.12 for *de minimis* amounts or 20-year-limitation amounts, or both. The notice shall include—

- (1) The amount of the employer's liability, if any, for *de minimis* amounts determined pursuant to § 4219.13;
- (2) The amount of the employer's liability, if any, for 20-year-limitation amounts determined pursuant to § 4219.14;
- (3) The schedule for payment of the liability determined under paragraph (f) of this section;
- (4) A demand for payment of the liability in accordance with the schedule; and

(5) A statement of when the plan sponsor expects to issue notices of reallocation liability to liable employers.

(c) *Notice of reallocation liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(3) to have determined the reallocation liability of employers, the plan sponsor shall issue a notice of reallocation liability in writing to each employer liable for reallocation liability. The notice shall include—

- (1) The amount of the employer's reallocation liability determined pursuant to § 4219.15;
- (2) The schedule for payment of the liability determined under paragraph (f) of this section; and
- (3) A demand for payment of the liability in accordance with the schedule.

(d) *Notice to employers not liable.* The plan sponsor shall notify in writing any employer that receives a notice of mass withdrawal under paragraph (a) of this section and subsequently is determined not to be liable for mass withdrawal liability or any component thereof. The notice shall specify the liability from which the employer is excluded and shall be provided to the employer not later than the date by which liable employers are to be provided notices of reallocation liability pursuant to paragraph (c) of this section. If the employer is not liable for mass withdrawal liability, the notice shall also include a statement, if applicable, that the employer is obligated to continue

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to make initial withdrawal liability payments in accordance with its existing schedule for payment of such liability.

(e) *Combined notices.* A plan sponsor may combine a notice of redetermination liability with the notice of and demand for payment of initial withdrawal liability. If a mass withdrawal and a withdrawal described in §4219.18 occur concurrently, a plan sponsor may combine—

(1) A notice of mass withdrawal with a notice of withdrawal issued pursuant to §4219.18(d); and

(2) A notice of redetermination liability with a notice of liability issued pursuant to §4219.18(e).

(f) *Payment schedules.* The plan sponsor shall establish payment schedules for payment of an employer's mass withdrawal liability in accordance with the rules in section 4219(c) of ERISA, as modified by this paragraph. For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall establish new payment schedules for each element of mass withdrawal liability by amending the initial withdrawal liability payment schedule in accordance with the paragraph (f)(1) of this section. For all other employers, the payment schedules shall be established in accordance with paragraph (f)(2).

(1) *Employers owing initial withdrawal liability as of mass withdrawal valuation date.* For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall amend the existing schedule of payments in order to amortize the new amounts of liability being assessed, *i.e.*, redetermination liability and reallocation liability. With respect to redetermination liability, the plan sponsor shall add that liability to the total initial withdrawal liability and determine a new payment schedule, in accordance with section 4219(c)(1) of ERISA, using the interest assumptions that were used to determine the original payment schedule. For reallocation liability, the plan sponsor shall add that liability to the present value, as of the date following the mass withdrawal valuation date, of the unpaid portion of the amended payment schedule described in the preceding sentence

and determine a new payment schedule of level annual payments, calculated as if the first payment were made on the day following the mass withdrawal valuation date using the interest assumptions used for determining the amount of unfunded vested benefits to be reallocated.

(2) *Other employers.* For an employer that had no initial withdrawal liability, or had fully paid its liability prior to the mass withdrawal valuation date, the plan sponsor shall determine the payment schedule for redetermination liability, in accordance with section 4219(c)(1) of ERISA, in the same manner and using the same interest assumptions as were used or would have been used in determining the payment schedule for the employer's initial withdrawal liability. With respect to reallocation liability, the plan sponsor shall follow the rules prescribed in paragraph (f)(1) of this section.

(g) *Review of mass withdrawal liability determinations.* Determinations of mass withdrawal liability made pursuant to this subpart shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA within the times prescribed by those sections. Matters that relate solely to the amount of, and schedule of payments for, an employer's initial withdrawal liability are not matters relating to the employer's liability under this subpart and are not subject to review pursuant to this paragraph.

(h) *Cessation of withdrawal liability obligations.* If the plan sponsor of a terminated plan distributes plan assets in full satisfaction of all nonforfeitable benefits under the plan, the plan sponsor's obligation to impose and collect liability, and each employer's obligation to pay liability, in accordance with this subpart ceases on the date of such distribution.

(i) *Determination that a mass withdrawal has not occurred.* If a plan sponsor determines, after imposing mass withdrawal liability pursuant to this subpart, that a mass withdrawal has not occurred, the plan sponsor shall refund to employers all payments of mass withdrawal liability with interest, except that a plan sponsor shall not refund payments of liability for *de minimis* amounts to an employer that

remains liable for such amounts under § 4219.18. Interest shall be credited at the interest rate prescribed in subpart C and shall accrue from the date the payment was received by the plan until the date of the refund.

**§ 4219.17 Filings with PBGC.**

(a) *Filing requirements*—(1) *In general.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this subpart for filing with the PBGC.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the notice and the certifications.

(c) *When to file.* A notice of mass withdrawal for a plan from which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw shall be filed with the PBGC no later than 30 days after the mass withdrawal valuation date. A notice of mass withdrawal termination shall be filed within the time prescribed for the filing of that notice in part 4041A, subparts A and B, of this chapter. Certifications of liability determinations shall be filed with the PBGC no later than 30 days after the date on which the plan sponsor is required to have provided employers with notices pursuant to § 4219.16.

(d) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(e) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this subpart was filed with the PBGC.

(f) *Contents of notice of mass withdrawal.* If a plan terminates by the

withdrawal of every employer, a notice of termination filed in accordance with part 4041A, subparts A and B, of this chapter shall satisfy the requirements for a notice of mass withdrawal under this subpart. If substantially all employers withdraw from a plan pursuant to an agreement or arrangement to withdraw, the notice of mass withdrawal shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The mass withdrawal valuation date.

(5) A description of the facts on which the plan sponsor has based its determination that a mass withdrawal has occurred, including the number of contributing employers withdrawn and the number remaining in the plan, and a description of the effect of the mass withdrawal on the plan's contribution base.

(g) *Contents of certifications.* Each certification shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) last assigned by the plan sponsor to the plan, and, if different, the EIN or PIN filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) Identification of the liability determination to which the certification relates.

(5) A certification, signed by the plan sponsor or a duly authorized representative, that the determinations have